



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2020-0712; FRL-10022-16-Region 1]

Air Plan Approval; Rhode Island; Control of Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions update Rhode Island air pollution control regulations for volatile organic compound (VOC) emissions from consumer products and architectural and industrial maintenance coatings. The intended effect of this action is to approval the revised regulations. This action is being taken under the Clean Air Act.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2020-0712. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. 617-918-1584, email Mackintosh.David@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On February 8, 2021 (86 FR 8564), EPA issued a notice of proposed rulemaking (NPRM) for Rhode Island. In the NPRM, EPA proposed approval of SIP revisions submitted by Rhode Island on January 24, 2020 and revised by Rhode Island on April 1, 2020, and December 28, 2020. The SIP revisions contain two revised air pollution control regulations 250-RICR-120-05-31, “Control of Volatile Organic Compounds from Consumer Products” and 250-RICR-120-05-33, “Control of Volatile Organic Compounds from Architectural Coatings and Industrial Maintenance Coatings.” These revised regulations became effective in Rhode Island on January 9, 2017 and July 21, 2020, respectively. In each regulation Rhode Island has submitted to EPA for incorporation into the SIP, its subsection 2 “Application” has been stricken from the rule. Rhode Island notes that this language is only relevant in Rhode Island and not incorporated into the Rhode Island SIP.

The NPRM provides the rationale for EPA's proposed approval, which will not be restated here.

II. Public Comment

EPA received four comments in response to the NPRM. The four comments support EPA’s proposal to approve the Rhode Island SIP revisions.

III. Final Action

EPA is approving the Rhode Island SIP revisions consisting of two revised regulations 250-RICR-120-05-31, “Control of Volatile Organic Compounds from Consumer Products” and 250-RICR-120-05-33, “Control of Volatile Organic Compounds from Architectural Coatings and Industrial Maintenance Coatings,” excluding the Application subsections 31.2 and 33.2 respectively.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Rhode Island regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the state implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹ 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 24, 2021.

Deborah Szaro
Acting Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO - Rhode Island

2. Section 52.2070 is amended in the table in paragraph (c) by revising the entries for “Air Pollution Control Regulation 31” and “Air Pollution Control Regulation 33” to read as follows:

§ 52.2070 Identification of plan.

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(c) * * *

EPA-Approved Rhode Island Regulations

State citation	Title/Subject	State effective date	EPA approval date	Explanations
**	*	*	*	**
Air Pollution Control Regulation 31	Control of VOCs from Commercial and Consumer Products	1/9/2017	[Insert date of publication in the <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	All of APCR No. 31 is approved with the exception of 31.2 “Application” which the state did not submit as part of the SIP revision.
**	*	*	*	**
Air Pollution Control Regulation 33	Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings	7/21/2020	[Insert date of publication in the <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	All of APCR No. 33 is approved with the exception of 33.2 “Application” which the state did not submit as part of the SIP revision.
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